

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Dan E. Durell,

Case No. 23-cv-2067 (ECT/DLM)

Plaintiff,

v.

Matt Kensy, Safety Compliance  
Specialist; Johnson, Safety Compliance  
Specialist; and DeRungs, Custodial  
Maintenance Services Manager, being  
sued in their individual capacities while  
acting in their official capacities,

**REPORT AND  
RECOMMENDATION**

Defendants.

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In an Order dated July 20, 2023, this Court directed Plaintiff Dan E. Durell to pay an initial partial filing fee of at least \$18.13. (Doc. 3.) The Court set Mr. Durell a 21-day deadline from the date of the Order to pay this fee, warning that if he failed to pay this fee by that deadline, the Court would recommend that this action be dismissed without prejudice for failure to prosecute. (*Id.* at 2.) *See also* Fed. R. Civ. P. 41(b).

That deadline has now passed, and Mr. Durell has not paid the initial partial filing fee. In fact, Mr. Durell has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, consistent with the warning previously given to Mr. Durell, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Wewerka v. Roper*, 431 F. App'x 517, 517

(8th Cir. 2011) (per curiam) (affirming dismissal without prejudice pursuant to Rule 41(b) following prisoner's failure to pay initial partial filing fee).

### **RECOMMENDATION**

Based upon the above, and on all the files, records, and proceedings in this action, **IT IS RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: August 17, 2023

s/Douglas L. Micko  
DOUGLAS L. MICKO  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served with a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).